

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT)	)	MDL No. 1917
ANTITRUST LITIGATION	)	
	)	Case No. C-07-5944-SC
	)	
This Order Relates To:	)	ORDER DENYING MOTION TO
	)	MODIFY DIRECT PURCHASER
Case No. 14-cv-02058 SC	)	PLAINTIFF CLASS
	)	CERTIFICATION SCHEDULING
	)	<u>ORDER</u>
CRAGO, d/b/a Dash Comp., Inc. et	)	
al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
MITSUBISHI ELECTRIC CORP., et	)	
al.,	)	
	)	
Defendants.	)	
	)	
	)	

Now before the Court is Defendant Mitsubishi Electric's ("Mitsubishi") motion to modify the schedule for briefing on the Direct Purchaser Plaintiffs' ("DPPs") motion for class certification. ECF No. 3501 ("Mot."). DPPs oppose, ECF No. 3525 ("Opp'n"), and Mitsubishi filed a reply. ECF No. 3618 ("Reply"). The Court finds the motion is appropriate for disposition without oral argument. For the reasons set forth below, the motion is DENIED.

In December, DPPs and Mitsubishi entered into a stipulation

1 regarding scheduling for briefing on DPPs' motion for class  
2 certification. ECF No. 3184 ("Stip."). This stipulation required  
3 DPPs to make their class certification expert available for  
4 deposition on or before January 31, 2015, oppositions and expert  
5 reports to be served on or before February 27, 2015, a reply to be  
6 filed on or before April 17, 2015, and a deposition of any  
7 opposition experts prior to or on March 27, 2014 (although this is  
8 a typo and the parties clearly intended March 27, 2015). Id.  
9 Citing the settlement between Thomson and DPPs, ongoing discovery  
10 between Mitsubishi and the DPPs, and the trial date for these  
11 actions, which was set for March 9, 2015, Mitsubishi sought a  
12 stipulation from DPPs to make additional changes to the schedule  
13 for the class certification motion. Mot. at ¶¶ 7-10. DPPs  
14 refused, and Mitsubishi filed this motion arguing that good cause  
15 exists for an approximately two-month extension of the deadlines.

16 After Mitsubishi filed its opening brief, the Court vacated  
17 the March 9, 2015 trial date. ECF No. 3515. In DPPs' view, the  
18 elimination of the pressures of trial preparation, coupled with the  
19 lack of evidence of diligence or good cause on the part of  
20 Mitsubishi either obviates the need to change the schedule or  
21 precludes granting the motion. Before the Court could address this  
22 motion, Mitsubishi filed its opposition to DPPs' class  
23 certification motion according to the existing schedule. ECF No.  
24 3709. While the parties had some scheduling disagreements, the  
25 Court also assumes that the deposition of DPPs' class certification  
26 expert, Jeffrey Leitzinger, which was supposed to take place on or  
27 before January 31, 2015, has already taken place. Nevertheless,  
28 Mitsubishi apparently continues to believe an extension is

1 necessary.

2       Scheduling orders "may be modified only for good cause and  
3 with the judge's consent." Fed. R. Civ. P. 16(b)(4). Pretrial  
4 scheduling orders may be modified if the dates scheduled "cannot  
5 reasonably be met despite the diligence of the party seeking the  
6 extension." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,  
7 609 (9th Cir. 1992). The focus of the good cause inquiry is "on  
8 the moving party's reasons for seeking modification. If that party  
9 was not diligent, the inquiry should end." Id. As the undersigned  
10 has previously observed, "centering the good cause analysis on the  
11 moving party's diligence prevents parties from profiting from  
12 carelessness, unreasonability, or gamesmanship, while also not  
13 punishing parties for circumstances outside their control." In re  
14 Cathode Ray Tube (CRT) Antitrust Litig., No. C-07-5944-SC, 2014 WL  
15 4954634, at \*2 (N.D. Cal. Oct. 1, 2014) (citing Orozco v. Midland  
16 Credit Mgmt. Inc., No. 2:12-cv-02585-KJM-CKD, 2013 WL 3941318, at  
17 \*3 (E.D. Cal. July 30, 2013)).

18       The Court finds that the elimination of the pressure of  
19 preparing for the now-vacated March 9 trial date ensures that the  
20 dates in the existing schedule can now "reasonably be met" with  
21 diligence on the part of Mitsubishi. Johnson, 975 F.2d at 609.  
22 Confirming that conclusion, Mitsubishi was able to file its  
23 opposition to DPPs' class certification motion on time after the  
24 Court vacated the trial date.

25       Moreover, the fact that Mitsubishi already filed its  
26 opposition brief means that the only remaining deadlines it asks to  
27 alter either apply exclusively to the DPPs (the April 17, 2015  
28 reply deadline) or were not the focus of Mitsubishi's motion (the

1 March 27, 2015 deadline for depositing any Mitsubishi class  
2 certification expert). Yet based on the Court's review of  
3 Mitsubishi's class certification opposition and declarations,  
4 Mitsubishi appears to rely merely on its economic expert, Dov  
5 Rothman, who does not address class certification or DPPs' expert  
6 at all. See generally ECF No. 3708-10 ("Rothman Report"). As a  
7 result, it is unclear if Mitsubishi would even have to produce Mr.  
8 Rothman for deposition under the parties' stipulated schedule.  
9 That means that even if the Court sets aside the parties' dispute  
10 over Mitsubishi's diligence, granting the motion would only result  
11 in the extension of (1) a deadline for DPPs (who do not seek an  
12 extension of time), and (2) a deadline that does not apply to  
13 Mitsubishi. This renders the motion either simply unnecessary or  
14 moot.

15 For these reasons, Mitsubishi's motion to modify the class  
16 certification scheduling order is DENIED.

17  
18 IT IS SO ORDERED.

19  
20 Dated: March 24, 2015

21   
22 \_\_\_\_\_  
23 UNITED STATES DISTRICT JUDGE  
24  
25  
26  
27  
28